Nos. 85-1377, 85-1378, 85-1379

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CHARLES A. BOWSHER, COMPTROLLER GENERAL OF THE UNITED STATES,

v. *Appellant,*

MIKE SYNAR, MEMBER OF CONGRESS, *et al.*,

Appellees.

UNITED STATES SENATE,

v. *Appellant,*

MIKE SYNAR, MEMBER OF CONGRESS, *et al.*,

Appellees.

THOMAS P. O'NEILL, JR., SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, *et al.*,

v. *Appellants,*

MIKE SYNAR, MEMBER OF CONGRESS, *et al.*,

Appellees.

On Appeals from the United States District Court for the District of Columbia

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BRIEF AMICUS CURIAE OF THE NATIONAL TAX LIMITATION COMMITTEE AND PACIFIC LEGAL FOUNDATION IN SUPPORT OF APPELLANTS

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QUESTIONS PRESENTED

1. Does Congress' limited, and constitutionally suspect, power of removal over the Comptroller General, an officer given allegedly executive duties under the Balanced Budget and Emergency Deficit Control Act, allow Congress such influence over that officer as to violate the separation of powers doctrine?

2. Does the separation of powers doctrine allow for coordination between two branches of government in the federal budget process—a process which the Constitution does not commit to either branch?

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INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule No. 36, the National Tax Limitation Committee and Pacific Legal Foundation respectfully submit this brief amicus curiae in support of appellants, Charles A. Bowsher, Comptroller General of the United States; the United States Senate; and Speaker of the House of Representatives, Thomas P. O'Neill, Jr. Consent to the filing of this brief has been obtained from counsel for all parties and copies of these consent letters have been lodged with the Clerk of this Court.

The National Tax Limitation Committee (NTLC) is a nonprofit corporation organized under the laws of California. Founded in 1975, NTLC's purpose is to bring about tax and spending limitation amendments to state constitutions, as well as the federal Constitution, and to encourage other constraints on spending and taxes. NTLC is the nation's largest citizens' lobbying group working to constitutionally limit the growth of government spending and taxes. The Committee is supported by over 600,000 individuals and 30,000 businesses, large and small. Affiliated with NTLC are Tax Limitation Research Foundation, NTLC Political Action Committee, and Taxpayers Political Action Committee.

Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt, public interest organization with over 19,000 contributors and supporters located throughout the country, and with offices in Sacramento, California, and Washington, D.C. Since its establishment in 1973, PLF has been actively engaged in research and litigation over a broad spectrum of public interest issues. PLF advocates a balanced approach in dealing with public interest issues, and supports the concept that governmental decisions and policies should reflect a careful assessment of the social and economic costs and benefits involved.

INTRODUCTION

The Balanced Budget and Emergency Deficit Control Act of 1985 (Deficit Control Act) gives the Comptroller General of the United States significant responsibility for the development and execution of a balanced federal budget. As summarized by the court below, the act requires the Comptroller General to "specify levels of anticipated revenue and expenditure that determine the gross amount which must be sequestered; and . . . [to] specify which particular budget items are required to be reduced by the various provisions of the Act . . . ." *Synar v. United States*, No. 85-3945, slip op. at 43 (D.D.C. Feb. 7, 1986). Describing these duties as "executive powers," the lower court held that the Comptroller General, as an "officer removable by Congress," could not exercise those powers without running afoul of the constitutional separation of powers doctrine. *Id.* at 48.

The separation of powers doctrine stems from the intent of the Framers of the Constitution "that the powers of the three great branches of the National Government be largely separate from one another." *Buckley v. Valeo*, 424 U.S. 1, 120 (1976). While the separation of powers doctrine protects our freedom and our constitutional system of government, it cannot be interpreted as contemplating a "total separation of each of these three essential branches of Government." *Id.* at 121. Determining when one branch may have impermissibly intruded into the sphere of another, then, is a difficult issue—one which must be resolved "according to common sense and the inherent necessities of the governmental coordination." *J. W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 406 (1928). As is shown below, common sense dictates a finding here that the duties imposed by the Deficit Control Act can be exercised by the Comptroller General in conformance with the Constitution.

SUMMARY OF ARGUMENT

In the instant case, the lower court held that "the powers conferred upon the Comptroller General as part of the automatic deficit reduction process are executive powers, which cannot constitutionally be exercised by an officer removable by Congress . . . ." Slip op. at 48. In essence, the court decided that the Comptroller General is a "legislative" officer, unable to perform "executive" functions. Such a ruling, however, erroneously assumes that Congress' power of removal over the Comptroller General adversely affects the ability of that officer to act independently, in violation of the separation of powers doctrine.

To the contrary, Congress' removal power is limited to cause, and thus does not subject the Comptroller General to congressional caprice. Moreover, there is a substantial question as to whether a congressional attempt to remove any presidentially-appointed officer, including the Comptroller General, would pass constitutional muster. Even if Congress' removal power were upheld, however, a presidential removal power over the Comptroller General also exists. The Comptroller General is thus left fearing *both* Congress and the President as the authorities who can remove him or her, and would offer improper allegiance to neither.[1]

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[1] The lower court's ruling is incorrect on two additional grounds. First, the court neglected to recognize that the Comptroller General, as a constitutionally appointed "Officer of the United States," is authorized to "exercis[e] significant authority pursuant to the laws of the United States . . . ." (*Buckley*, 424 U.S. at 126), including that conferred by the Deficit Control Act. Second, the court's separation of powers analysis hinges upon its finding that the Comptroller General is required to exercise "executive" functions under the act. Slip op. at 43-44. Given that the Congressional Budget Officer, an officer chosen by Congress to perform "legislative" duties, exercises similar functions under the act, the basis for the court's finding is questionable at best.

ARGUMENT

I. THE FACT THAT THE COMPTROLLER GENERAL MAY BE REMOVED BY CONGRESS FOR CAUSE DOES NOT PERMIT CONGRESS TO EXERCISE UNDUE CONTROL OVER THAT OFFICER

The Comptroller General may be removed by impeachment or by "joint resolution of Congress, after notice and an opportunity for a hearing only for (i) permanent disability; (ii) inefficiency; (iii) neglect of duty; (iv) malfeasance; or (v) a felony or conduct involving moral turpitude."[2] 31 U.S.C. § 703(e)(1). While, standing alone, the terms "inefficiency," "neglect of duty," or "malfeasance" might be deemed vague and capable of broad interpretation, the procedural requirements of notice and a hearing insure that removal may not be had on a congressional whim. *See Reagan v. United States*, 182 U.S. 419, 425 (1901) ("where causes of removal are specified by Constitution or statute . . . notice and hearing are essential. [Otherwise] the appointing power could remove at pleasure or for such cause as it deemed sufficient"). Once these procedures are mandated, constitutional notions of due process would seem to require, at a minimum, a hearing in which evidence is presented, a determination based on substantial evidence, and judicial review of a final decision. Moreover, the removal of the Comptroller General for cause must be enacted by means of a joint resolution—a legislative act requiring the concurrence of a majority of both houses of Congress and the signature of the President, or the override by a two-thirds vote of a presidential veto.[3]

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[2] All officers can be removed by impeachment. U.S. Const. Art. II, § 4. That method of removal poses no separation of powers problem here. *See* slip op. at 29.

[3] *See* slip op. at 31 n.21. The removal power is thus limited to the same process by which Congress could adopt a statute abolishing the office of Comptroller General. This limited removal power simply grants to Congress a less drastic course of action.

In sum, these procedural safeguards act as a substantial check on Congress' power to remove an officer, and limit that power to circumstances of demonstrated dereliction of duty—not simply a disagreement as to policy. This power of removal may well serve to encourage the Comptroller General to carry out his or her responsibilities to the best of his or her ability, but it does not require that officer to "obey" Congress with respect to the execution of official duties.

That removal for cause does not interfere with an officer's independence was made clear by the Court in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). There the Court ruled that a Federal Trade Commissioner, who was appointed by the President for a seven-year term and who could, by statute, be removed by the President for "inefficiency, neglect of duty, or malfeasance in office" (15 U.S.C. § 41), could not be removed by the President at will. While recognizing that a President could remove at will an officer who exercised purely executive functions and who had no fixed term of office (*see Shurtleff v. United States*, 189 U.S. 311 (1903)), the Court found that a Federal Trade Commissioner exercised "predominantly quasi judicial and quasi legislative" duties and that "the fixing of a definite term subject to removal for cause . . . is enough to establish the legislative intent that the term is not to be curtailed in the absence of such cause." *Humphrey's Executor*, 295 U.S. at 623-24.

The Court's ruling in *Humphrey's Executor* teaches that the presidential power of removal for cause does not jeopardize the independence of an officer exercising nonexecutive functions. In the same way, the congressional power of removal for cause cannot be said to jeopardize the independence of an officer exercising executive functions.

Although this argument was raised below, the lower court rejected it on the ground that "the scope of execu-

tive authority over the removal of nonexecutive officers" is not necessarily equal to "the scope of congressional authority over the removal of executive officers." Slip op. at 47. Since the President's power to remove stems from the constitutional power to appoint (citing *In re Hennen*, 38 U.S. (13 Pet.) 230 (1839)), the lower court found that the "permissible impact" of this presidential removal power on an officer's independence may be stronger than the "permissible impact" of the congressional removal power on an officer's independence. *Id.* In other words, the Framers of the Constitution, by implicitly giving the President the power of removal while making no provision for congressional removal power, may have allowed for some measure of executive interference in the workings of an independent agency.

This undocumented hypothesis, however, requires a perverse reading of *Humphrey's Executor*, where the Court found that the office of Federal Trade Commissioner could be free from executive control even in light of a presidential power of removal for cause. *See* 295 U.S. at 628-29. The lower court's determination requires a contrary reading—that the presidential power of removal for cause does in fact interfere with an independent office—as well as extraordinary insight into the minds of the Framers as to their intent with respect to then-unheard-of independent agencies.

Removal for cause, whether exercised by an Executive or a Legislature, requires findings of actual dereliction of duty, not mere disagreement with respect to policy. If, as *Humphrey's Executor* held, the threat of removal for cause by a President still allows an officer to exercise his or her duties independently, then the threat of congressional removal for cause should induce no greater tremors in the minds of independent officers.[4]

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[4] The court below also rejected this analogy to *Humphrey's Executor* because the "congressional power to remove is more potent, since the Executive has no means of retaliation that may dissuade

II. CONGRESS' POWER TO REMOVE THE COMPTROLLER GENERAL SHOULD HOLD LITTLE SWAY, GIVEN THE QUESTIONABLE CONSTITUTIONALITY OF THAT POWER

The lower court invalidated the Deficit Control Act because the statute establishing the office of Comptroller General gives Congress the power to remove that officer. *See* 31 U.S.C. § 703(e)(1)(B). It is likely, however, that Congress has *no power* to remove the Comptroller General, an officer appointed by the President, and thus that the removal provision, not the act, is unconstitutional. The constitutional implications of the congressional removal provision must be examined before that statute is allowed to invalidate the otherwise constitutional Deficit Control Act.[5]

The Constitution vests in the President the power to appoint "Officers of the United States," with the advice and consent of the Senate. U.S. Const. Art. II, § 2, cl. 2. Inferior officers may be appointed by the President alone, by courts of law, or by heads of departments, depending on the dictates of Congress. *Id.* Although each House of Congress may choose its own officers (U.S. Const. Art. I, § 2, cl. 5, § 3, cl. 5) the Constitution does not permit

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Congress from exercising it . . . ." Slip op. at 48. This discussion, of course, goes to whether Congress will exercise the power, not to whether Congress' power to do so will impact the manner in which an officer carries out his or her duties. It is only the latter question which is relevant here. In any event, one could argue that the congressional power to remove is actually weaker, inasmuch as a majority of the members of both Houses of Congress and the President must be persuaded that cause for removal exists.

[5] This issue is ripe for review, despite the fact the Congress has not attempted to remove the Comptroller General, because the court below based its determination solely on the existence of the congressional removal provision. If the removal provision is found to be unconstitutional, then the duties imposed by the Deficit Control Act can be validly exercised by the Comptroller General.

Congress to appoint "Officers of the United States" or inferior officers.

As has been long recognized, the power to appoint implies the power to remove. *See, e.g., In re Hennen*, 38 U.S. at 259. While Congress may limit the ability of the President, the courts, and heads of departments to remove inferior officers (*United States v. Perkins*, 116 U.S. 483 (1886)), and may limit the President's ability to remove principal officers exercising nonexecutive functions (*Humphrey's Executor*, 295 U.S. 602), Congress may not give itself any power of removal or put itself in the removal process (*Myers v. United States*, 272 U.S. 52, 161-62, 164 (1926)). As the Court in *Myers* noted, to allow Congress the power to remove an officer, whom the President has appointed in conformance with the Appointments Clause, would be "to infringe the constitutional principle of the separation of governmental powers." 272 U.S. at 161.

The statute establishing the office of Comptroller General, which includes the congressional removal provision, was enacted in 1921.[6] The power of Congress to remove the Comptroller General was specifically debated on the floor of the House of Representatives and found to be supported by language in *In re Hennen* that

> ". . . in the absence of all constitutional or statutory provision as to the removal of such [inferior] officers, it would seem to be a sound and necessary rule to consider the power of removal as incident to the power of appointment." 59 Cong. Rec. 8610 (1920)

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[6] A similar statute was passed in 1920, but was vetoed by President Wilson because it allowed removal of the Comptroller General by concurrent resolution which does not require a presidential signature to become effective. *See* 59 Cong. Rec. 8609-10 (President's Veto Message). The House was unable to override the veto (*id.* at 8614), and Congress passed the existing statute, containing the provision for removal by joint resolution, in 1921. President Harding signed the legislation into law.

(remarks of Rep. Good paraphrasing *In re Hennen*, 38 U.S. at 259).

Congress thus felt justified in enacting a "statutory provision" giving itself removal power.

Representative Good's quotation from *In re Hennen*, however, must be taken in context. That case concerned the power of a judge to remove at will a clerk whom he had appointed. In the legislation authorizing judges to appoint clerks, no provision for a term of office or removal was made. 38 U.S. at 258. The Court ruled that, unless a power to remove were implied, the clerk would be entitled to the position during his lifetime or good behavior:

> "It cannot, for a moment, be admitted that it was the intention of the Constitution that those offices which are denominated inferior offices should be held during life. And if removable at pleasure, by whom is such removal to be made? In the absence of all constitutional provision or statutory regulation, it would seem to be a sound and necessary rule to consider the power of removal as incident to the power of appointment." *Id.* at 259.

Viewed in context, then, this language from *In re Hennen* cannot be used as the foundation for any *congressional* power of removal. It must also be noted that both the decision in *In re Hennen* and the 1921 removal provision preceded the Court's decision in *Myers*, *supra*, in which congressional authority to remove an officer was specifically disavowed.

In prior cases, the Court has considered whether various limits on the President's power to remove principal and inferior officers were constitutional. *See Shurtleff*, 189 U.S. 829; *Myers*, *supra*; *Humphrey's Executor*, 295 U.S. 602; and *Wiener v. United States*, 357 U.S. 349 (1958). While mere limitations on removal power raised the specter of potential conflicts with the separation of powers doctrine, the instant case concerns Congress'

attempt to abrogate the President's removal power entirely and to assign that power to itself. Such an effort, under the holdings of the Court, violates the principle of separation of powers.[7]

III. AS AN "OFFICER OF THE UNITED STATES," THE COMPTROLLER GENERAL IS ALSO SUBJECT TO REMOVAL BY THE PRESIDENT

The lower court's decision was based upon its ruling that, since Congress could remove the Comptroller General, it was Congress to whom the Comptroller General would look for guidance in the performance of the executive functions assigned. *See* slip op. at 48. As discussed above, this ruling is erroneous because the Comptroller General can be removed only for cause, not for simply failing to do Congress' bidding. In addition, it is not at all certain that an attempt by Congress to remove the Comptroller General would be constitutionally permissible.

Even if this Court were to find that removal for cause does not offer adequate protection and that Congress does have the power to remove the Comptroller General, the Deficit Control Act should still be upheld because, in addition to Congress' power to remove, there is a presidential power to remove the Comptroller General which cannot be abolished. If the Comptroller General can be removed by either the Legislature or the Executive, then that officer must fear both equally and would not turn to either for guidance.

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[7] The court below did address this issue, but in the context of choosing between two incompatible provisions—the powers in the Deficit Control Act or the removal authority. *See* slip op. at 32. The question, however, is not which provision should win out over the other, but whether a constitutionally infirm provision (the removal authority) can be held to negate an otherwise valid legislative enactment (the Deficit Control Act). The answer, clearly, is that it may not.

Although the Comptroller General removal provision does not state that *only* Congress may remove the Comptroller General (31 U.S.C. § 703(e)(1)), it is clear from the legislative history of the statute establishing the office that this was exactly Congress' intention. *See* 59 Cong. Rec. 8610 (1920) ("[a]nd that is what this Congress attempted to do, to take from the President the incidental right of removal, and to provide the circumstances and the methods of removal"); *see generally* 59 Cong. Rec. 8609-13 (1920) and 61 Cong. Rec. 982-92 (1921). Regardless of statutory language or congressional intent, however, the President's power to remove officers cannot be completely abrogated.

In *Shurtleff*, 189 U.S. 829, the Court considered whether the President could remove an officer who had been appointed by an earlier President with the advice and consent of the Senate. Although the statute authorizing the appointment of the officer limited removal to cause, the Court held that the "mere specification in the statute of some causes for removal [does not] exclude[] the right of the President to remove for any other reason which he, acting with a due sense of his official responsibility, should think sufficient." *Id.* at 832. This holding was followed by the Court in *Myers*, 272 U.S. 52, where it was decided that the President had the sole power to remove those officers whom he had appointed.

With respect to officers exercising nonexecutive functions, however, the Court ruled in *Humphrey's Executor* that Congress could limit the President's removal power to cause:

> "We think it plain under the Constitution that illimitable power of removal is not possessed by the President in respect of officers of the character of those just named. The authority of Congress, in creating quasi legislative or quasi judicial agencies, to require them to act in discharge of their duties independently of executive control cannot well be

> doubted; and that authority includes, as an appropriate incident, power to fix the period during which they shall continue, and to forbid their removal except for cause in the meantime. For it is quite evident that one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will." 295 U.S. at 629.

Similarly, the Court in *Wiener*, 357 U.S. 349, invalidated an attempt by the President to remove an independent officer without cause. The Court found that, as to independent officers, a power of removal at will was not conferred on the President by the Constitution and could not be inferred from the applicable statute. The Court did intimate that removal for cause, while not statutorily authorized, would be available to the President. *See id.* at 356.

The proposition that can be gleaned from these cases, taken together, is that a President always has the power to remove an officer who has been appointed pursuant to the Appointments Clause, inasmuch as the power to remove derives from the power to appoint. While Congress may limit the authority of the President to remove an independent officer, that power cannot be taken away completely. Even an independent officer, duly appointed by the President, can be removed by the President for cause, statutory language or intent to the contrary notwithstanding.

The Comptroller General is an "Officer of the United States," appointed by the President with the advice and consent of the Senate. Although the lower court found that, at least under the Deficit Control Act, the Comptroller General exercises executive functions (slip op. at 43-44), it can be assumed, *arguendo*, that Congress did not intend the Comptroller General to be a purely executive officer. As a result, the President may not have complete freedom to remove the Comptroller General.

Rather, the President's power may be limited to removal for cause, *e.g.*, inefficiency, neglect of duty, or malfeasance. In no circumstances, however, can it be argued or assumed that a presidential power of removal does not exist with respect to the Comptroller General. At a minimum, the President may remove that officer for cause.

The lower court's concern that Congress can control the executive functions of the Comptroller General is thus overridden by the inherent presidential power of removal over that officer. The dual threat of a presidential and a congressional removal power are offsetting and create no compulsion on the part of the Comptroller General to "obey" either branch in the exercise of his or her duties. Without the Comptroller General's presumed allegiance to congressional dictates, then, the lower court's separation of powers concern disappears.

IV. THE LOWER COURT'S MECHANICAL APPLICATION OF THE SEPARATION OF POWERS DOCTRINE IS INAPPROPRIATE, GIVEN THAT THE BUDGETARY PROCESS IS A FUNCTION SHARED JOINTLY BY THE PRESIDENT AND CONGRESS

The lower court's determination that the automatic deficit reduction process of the Deficit Control Act violates the doctrine of separation of powers was based largely upon an unduly restrictive application of that doctrine. Referring to its decision on this matter, the lower court declared:

> "It may seem odd that this curtailment of such an important and hard-fought legislative program should hinge upon the relative technicality of authority over the Comptroller General's removal—particularly when we have rejected the more intuitive 'excessive delegation' arguments that were the focus of the attacks upon the legislation by its opponents on the floor of Congress and by the plaintiffs here. But the balance

> of separated powers established by the Constitution consists precisely of a series of technical provisions that are more important to liberty than superficially appears, and whose observance cannot be approved or rejected by the courts as the times seem to require." Slip op. at 49.

In essence, the lower court determined that "technical provisions" of the Constitution from which the separation of powers doctrine is derived require the total separation of the three branches of government. Such an approach, however, misinterprets the Framers' intent and ignores the Court's admonition that separation of powers concerns be resolved "according to common sense and the inherent necessities of the governmental coordination." *J. W. Hampton, Jr. & Co.*, 276 U.S. at 406. Amici do not contend that the separation of powers doctrine ought to be cast aside here simply because the process at issue is a vital one. To the contrary, amici believe that, within the confines of the doctrine, there is ample room for coordination between the legislative and executive branches to develop and implement a balanced federal budget.

The doctrine of separation of powers reflects the intent of the Framers of the Constitution that the three branches of government should operate independently of one another. The desire for such independence derives from Montesquieu's observation that "'"apprehensions may arise lest *the same* monarch or senate should *enact* tyrannical laws to *execute* them in a tyrannical manner."'" *Buckley*, 424 U.S. at 120, *quoting* The Federalist No. 47 (J. Madison) (emphasis in original). While the doctrine plays a critical role in insuring the balanced and equitable administration of government, it does not require each branch to function in a vacuum or completely isolated and insulated from a co-equal department. As noted by the Court in *Buckley:*

> "[I]t is also clear from the provisions of the Constitution itself, and from the Federalist Papers, that

> the Constitution by no means contemplates total separation of each of these essential branches of Government. The President is a participant in the lawmaking process by virtue of its authority to veto bills enacted by Congress. The Senate is a participant in the appointive process by virtue of its authority to refuse to confirm persons nominated to office by the President. The men who met in Philadelphia in the summer of 1787 were practical statesmen, experienced in politics, who viewed the principle of separation of powers as a vital check against tyranny. But they likewise saw that a hermetic sealing off of the three branches of Government from one another would preclude the establishment of a Nation capable of governing itself effectively." 424 U.S. at 121.

The Framers thus acknowledged that a certain degree of interdependence within our tripartite system of government would be necessary in order to make the system function effectively. Therefore, apart from those instances in which a co-equal branch attempts to exercise a power that has been specifically conferred upon another department, there is no automatic formula for determining when the principle of separation of powers has been violated. Rather, the doctrine must be applied on a case-by-case basis with some attention given to the objectives sought to be attained by the particular arrangement being challenged.

At issue in the instant case is the process by which a balanced federal budget will be attained. Because the Constitution does not prescribe the method of formulating a federal budget, it is a process which can be, and is, shared by the executive and legislative branches, and indeed is one which *requires* a large degree of cooperation and interchange between these two departments. *See, e.g.*, 31 U.S.C. §§ 1101-13 (setting forth the President's responsibility to prepare the budget and to provide Congress with supporting information). The goal of the budget it-

self is not only "to serve as the basis of information for the Congress and the public with regard to the past work and future plans of the administration but also as the means of control of the general policy of the government by the legislative branch and of the details of administration by the executive branch." United States Congress, Senate Committee on Government Operations, *Financial Management in the Federal Government* 7 (1961). In such a situation, where a particular governmental function has not been clearly assigned to any one department, and there is no "encroachment or aggrandizement of one branch at the expense of the other" (*Buckley*, 424 U.S. at 122), the principle of separation of powers should not be rigidly invoked.

As discussed above, the separation of powers doctrine does permit cooperation and coordination between the executive and legislative branches in the budget process. Such collaborative efforts must go forward if a *balanced* budget is ever to be achieved. As a matter of sound public policy, it is essential that the President and Congress be allowed to use their budgetary powers in concert in order to restore fiscal responsibility to the federal budget.

The concept of a balanced budget, and of a process to insure its attainment, would have been favorably accepted by the Framers who understood well the ill effects resulting from excessive public debt. As stated by Thomas Jefferson, "[t]he public debt is the greatest of dangers to be feared by a republican government." *Quoted in* S. Rep. No. 163, 99th Cong., 1st Sess. 18 (1985) (report of the Senate Judiciary Committee on the Balanced Budget Constitutional Amendment). Moreover, Alexander Hamilton, "who perhaps more than any other individual, influenced the course of American economic policy during our nation's first century" (*id.*), was particularly adamant about maintaining balance in the budget:

> " 'As the vicissitudes of nations begat a perpetual tendency to the accumulation of debt, there ought to be a perpetual, anxious, and unceasing effort to reduce that which at any time exists, as fast as shall be practicable, consistent with integrity and good faith.' " *Quoted in id.*

The concerns expressed by both Jefferson and Hamilton were later echoed by early American Presidents such as John Adams, John Quincy Adams, and Andrew Jackson. President Jackson, who perhaps was among the most "uncompromising advocates of a balanced budget," eloquently expressed his views regarding the federal budget in the following manner:

> " 'Once the budget is balanced and the debts paid off, our population will be relieved from a considerable portion of its present burdens and will find not only new motives to patriotic affection, but additional means for the display of individual enterprise.' " *Quoted in id.* at 19.

As illustrated above, the Framers of the Constitution, as well as our early statesmen, were intensely concerned over the topic of the public debt and of its effects on our nation. Amici submit, therefore, that the Framers would not have been offended by a budgetary process that is shared by two co-equal branches of government or by a procedure that is designed to insure that the budget is, and remains, balanced. Furthermore, given the complexity of the process, amici contend that the separation of powers principle should be leniently applied, thus allowing the branches enough flexibility and freedom to achieve the goal of a balanced budget.

In amici's view, Congress' extremely limited authority to remove the Comptroller General, which in and of itself may transgress the Constitution, provides an insufficient basis to mechanically or reflexively apply separation of powers principles. Rather, the doctrine must be analyzed against the backdrop of congressional and presidential

intent underlying the Deficit Control Act, the public policy that it seeks to advance and, most importantly, the actual impact, if any, that the legislation in this case is likely to have on the balance of powers between Congress and the President.

CONCLUSION

For the reasons stated herein, and the arguments set forth in appellants' briefs, the decision of the United States District Court for the District of Columbia should be reversed.

Respectfully submitted,

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